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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,099	04/07/2004	Sean Christopher Endler	86605 7114	8955
37123 7590 04/27/2009 FITCH EVEN TABIN & FLANNERY 120 SOUTH LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER				
BEITZ, JACOB F				
ART UNIT		PAPER NUMBER		
2169				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/821,099

**Applicant(s)**

ENDLER ET AL.

**Examiner**

Jacob F. B  tit

**Art Unit**

2169

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 20-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Remarks***

1. In response to communications filed on 6 February 2009, claims 14, 20, 28 are amended per applicant's request. While the applicant states that only claims 1-12, 14 and 20-29 are pending in the application, claims 1-14 and 20-29 are presently pending in the application. Therefore, contrary to the applicant's assertion, twenty-four (24) claims remain pending in the application. If the applicant wishes to cancel claim 13, an indication that this claim is canceled should be put on any future listing of claims.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 14 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In page 8, lines 19-23 of the specification the applicant has provided evidence that the applicant intends the system to be made entirely of software. Software is not one of the four categories of invention and therefore this claim is not statutory. Software is not a series of steps or acts and thus is not a process. Software is not a physical article or object and as such is not a machine or manufacture. Software is not a combination of substances and therefor not a composition of matter.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 26-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Chang (U.S. patent No. 2003/0050982 A1).

As to claim 26, Chang teaches a method comprising:

receiving an event profile comprising at least one attribute relating to an event (see paragraph 0011 and 0015-16);

receiving content and corresponding content description information comprising at least one attribute related to the content (see paragraph 0014); and

associating the content with the event when the at least one attribute related to the event matches the at least one attribute related to the content, wherein the attribute is not a time or a date (see paragraph 0012 and 0015, where "at least one" of the attributes is not related to the time or date).

As to claim 27, Chang teaches wherein the event comprises multiple participants and the content having been received is transmitted by one of the multiple participants (see paragraph 0023).

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-14, 20-25, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (U.S. patent No. 2003/0050982 A1) in view of Ohkubo (U.S. patent No. 2003/0184653 A1).

As to claim 1, Chang teaches a method comprising:

detecting an event (see paragraph 0011, 0014, 0015, and 0017);

searching for an event profile corresponding to the event (see paragraph 0011, 0014, 0015, and 0017, this step is implicit from the );

detecting content transmitted by a participant of the event and description information corresponding to the content (see paragraph 0014); and

associating the content with the event based on the description information and the event profile (see paragraph 0012, 0015, and 0016).

Chang does not distinctly disclose wherein the searching is done without using a time or date.

Ohkubo teaches this, see paragraph 0023 and 0096-0101. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the

system to infer event date and time information without the date and time being a part of the original event profile.

As to claim 2, Chang as modified, teaches further comprising matching the description information with the event profile (see Chang, paragraph 0014-0015).

As to claim 3, Chang as modified above, still does not distinctly disclose wherein the event profile includes an event location.

Ohkubo teaches this, see paragraphs 0013-0014. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the images to be identified based on image information.

As to claim 4, Chang as modified, teaches wherein the event profile includes an event time (see Chang, paragraph 0014-0015).

As to claim 5, Chang as modified, teaches wherein the event profile includes an event duration (see Chang, paragraph 0014-0015).

As to claim 6, Chang as modified, teaches wherein the event profile includes a listing of event participants (see Chang, paragraph 0023).

As to claim 7, Chang as modified above, still does not distinctly disclose wherein the description information includes a capture location.

Ohkubo teaches this, see paragraphs 0013-0014. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the images to be identified based on image information.

As to claim 8, Chang as modified, teaches wherein the description information includes a time (see Chang, paragraph 0014-0015).

As to claim 9, Chang as modified, teaches wherein the description information includes an author (see Chang, paragraph 0014-0015).

As to claim 10, Chang as modified, teaches wherein the content is a digital image (see Chang, paragraph 0011).

As to claim 11, Chang as modified, teaches wherein the content is one of a video media, an audio media, a textual media, and a graphical media (see Chang, paragraph 0011).

As to claim 12, Chang as modified, teaches further comprising storing the event profile (see Chang, paragraphs 0016-0017).

As to claim 13, Chang as modified, teaches further comprising storing the description information with the content (see Chang, paragraph 0016).

As to claim 14, Chang teaches a system comprising:

means for detecting an event (see paragraph 0011, 0014, 0015, and 0017);

means for searching for an event profile corresponding to the event (see paragraph 0014 and 0016, where both the user identifier and the time stamp are used in finding the event profile);

means for detecting content relating to the event and transmitted by a participant of the event and description information corresponding to the content (see paragraph 0014); and

means for associating the content with the event based on the description information and the event profile (see paragraph 0012 and 0015).

Chang does not distinctly disclose wherein the means for searching is adapted to search without using a time or a date.

Ohkubo teaches this, see paragraph 0023 and 0096-0101. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the system to infer event date and time information without the date and time being a part of the original event profile.

As to claim 20, Chang teaches a system, comprising:



an interface module to receive content and description information corresponding to the content, wherein the content is relating to an event is captured and transmitted by a participant of the event (see paragraph 0014);

a storage module to store a record containing an event profile describing an event (see paragraph 0011 and 0015-16); and

a content categorization module for matching without using a time or date, the content with the event and the description information (see paragraph 0012 and 0015, “for matching without using a time or date is a statement of intended use and therefore does not hold patentable weight, see MPEP 2106 II. C.).

In the alternative Chang does not distinctly disclose matching without using a time or a date, the content with the event and the description information.

Ohkubo teaches this, see paragraph 0023 and 0096-0101. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the system to infer event date and time information without the date and time being a part of the original event profile.

As to claim 21, Chang as modified, teaches further comprising an event detection module to detect the event (see Chang, paragraph 0011 and 0015).

As to claim 22, Chang as modified, teaches wherein the storage module stores the description information and the content (see Chang, paragraph 0016).

As to claim 23, Chang as modified, teaches further comprising an access control module to selectively allow a user to view the content (see Chang, paragraph 0016).

As to claim 24, Chang as modified, teaches wherein the access control module allows the user to view the content when the user is a participant listed in the event profile associated with the event (see Chang, paragraph 0023).

As to claim 25, Chang teaches a computer-readable medium having computer executable instructions for performing a method comprising:

detecting an event comprising a plurality of participants and storing an event profile (see paragraph 0011 and 0015-16);

receiving content without a time or a date relating to the event from one of the plurality of participants (see paragraph 0014);

receiving a request to access content from a user (see paragraph 0016);

searching for an event profile corresponding to the content (see 0023);

matching the content with the event profile (see paragraph 0014-15); and

displaying the content based on the user and the event profile (see paragraph 0016 and 0023).

Chang does not teach receiving content without a date or a time relating to the event from one of the plurality of participants.

Ohkubo teaches this, see paragraph 0023 and 0096-0101. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Chang to include the teachings of Ohkubo because these teachings would allow the system to infer event date and time information without the date and time being a part of the original event profile.

As to claim 28, Chang as modified, teaches further comprising:  
displaying the content when requested by a participant of the event, wherein the at least one non-temporal attribute related to the event is a list of participants of the event (see Chang, paragraph 0016 and 0022).

As to claim 29, Chang as modified, teaches further comprising:  
associating the content with the event when the at least one attribute related to the content and the at least one attribute related to the event match by one of:  
an author of the content and a participant of the event (see Chang, paragraph 0014); and  
a location of the capturing of the content and a location of the event;  
wherein the at least one attribute related to the event comprises at least one of the event location, the event time and date, the event duration and the participant and wherein the at least one attribute related to the content comprises at least one of the author of the content, the time

and date of the capturing of the content and the location of the capturing of the content (see Chang, paragraphs 0014-0015).

***Response to Arguments***

8. Applicant's arguments with respect to claims have been considered but are not deemed persuasive.

It is noted that “to receive content ...”; “to store a record...”; and “for matching without using a time or date, the content with the event and the description information” as recited in claim 20 appears to be statements of intended use and therefore hold no patentable weight. See MPEP 2106 II. C.

In response to the applicant's arguments directed towards the rejections given under 35 U.S.C. §101, the arguments have been considered, but are not deemed persuasive. While the amendments to claim 20 require for the storage module to include a “tangible storage unit”, the “means for storing the content and the event” in claim 14 still could be reasonably interpreted as software means. Software instructions that are used when saving content and the event would be this means. Therefore, the rejection under 35 U.S.C. §101 is maintained.

In response to the applicant's arguments directed to the rejection given under 35 U.S.C. §102, the arguments have been considered, but are not deemed persuasive. Claim 26 recites “at least one attribute related to the event matches the at least one attribute related to the content, wherein the attribute is not a time or a date”. Chang teaches matching in a calendar application

both a time stamp and a user. Therefore, “at least one attribute related to the event matches at least one attribute related to the content” and that at least one attribute is not “a time or a date”. That is, the user is associated with the event and is not a time or date attribute. Therefore, the limitations of claim 26 are anticipated by Chang.

In response to the applicant’s arguments that Ohkubo fails to describe or suggest “searching for an even profile corresponding to the event wherein the searching is done without using a time or date”, the arguments have been fully considered, but are not deemed persuasive. It is first noted that the claims are written to require search without a time or search without a date, not both. The conjunction “or” requires a choice between one or the other. If the claim was to be written to exclude both a time and a date it would use the conjunction “and”.

Ohkubo teaches searching for a time without using an exact time. The even period is inferred from the date the images were taken, the amount of faces in the images, the location, and other factors. Therefore Ohkubo teaches searching “wherein the searching is done without using a time **or** date” (emphasis added).

It is lastly noted that searching for an event that is without a time and without a date would be the same as finding a location and associating it with content. This is similar to the process discussed in paragraphs 0011-0012 of previously cited Shiota et al. (U.S. patent application publication 2004/0135904 A1) and see Van De Sluis et al. (U.S. patent application publication No. 20060155761 A1).

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and can be found listed on the attached form PTO-892.
10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob F. B  tit whose telephone number is (571)272-4075. The examiner can normally be reached on Monday through Friday 9:30 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tony Mahmoudi can be reached on (571) 272-4078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Tony Mahmoudi/  
Supervisory Patent Examiner, Art Unit  
2169